



|                           |                   |                    |                     |
|---------------------------|-------------------|--------------------|---------------------|
| Contract No.<br>9385      | Station<br>n/a    | Mile/Line:<br>I-90 | C/S                 |
| Staked by                 | Date              | Work Started Date  | Work Completed Date |
|                           |                   |                    |                     |
| Calculated by<br>Mark Lee | Date<br>12/5/2019 | Checked by         | Inspector           |
|                           |                   |                    | Date                |

## Bid Item 082

### OTHER TRAFFIC CONTROL LABOR

\$167,316.48 was scheduled to be deferred on this estimate.

$\$167,316.48 / \$135.00$  dollars per hour = 1239.38 hours

1239.38 hours x \$135.00 dollars per hour = \$167,316.30 is the actual amount being deferred.

See attached letter dated 12/17/2019

Per the attached letter, \$71,546.68 will need to be released from the previous deferral.

\$95,769.80 will need to be deferred.

$\$167,316.48 - \$71,546.68 = \$95,769.80$

$\$95,769.80 / \$135.00$  per hour = 709.41 Hours

709.41 hours x \$135.00 per hour = \$95,770.35 is the actual current amount being deferred.

| Item Num | Material Brand Name/Model Type | Manufacturer | Brand Name/Model Type | RAMS/QPL Ref. No. | Appr/Acc Code | Basis of Accept |
|----------|--------------------------------|--------------|-----------------------|-------------------|---------------|-----------------|
|          |                                |              |                       |                   | /             |                 |
|          |                                |              |                       |                   |               |                 |

| Item Num | Item Description            | Grp | Date Work Complete | Unit | Quantity | Ledger Entry No. | Posted By Init. | Posted By Date | Checked By Init. | Checked By Date | Est. No. |
|----------|-----------------------------|-----|--------------------|------|----------|------------------|-----------------|----------------|------------------|-----------------|----------|
| 0082     | OTHER TRAFFIC CONTROL LABOR | 1   | 12/5/2019          | HR   | -1239.38 | 436              | MEL             | 12/05/19       | EK               | 12/05/19        | 10       |
| 0082     | OTHER TRAFFIC CONTROL LABOR | 1   | 12/19/20...        | HR   | 1239.38  | 437              | MEL             | 12/05/19       | EK               | 12/05/19        | 10       |
| 0082     | OTHER TRAFFIC CONTROL LABOR | 1   | 3/5/2020           | HR   | -709.41  | 532              | MEL             | 04/13/20       | EK               | 04/13/20        | 14       |
| 0082     | OTHER TRAFFIC CONTROL LABOR | 1   | 3/5/2020           | HR   | 709.41   | 520              | MEL             | 03/17/20       | EK               | 04/13/20        | 14       |

#### Attachments



9385 026 - Payment  
Withholding Final.pdf  
Adobe Acrobat Document  
109 KB



Undeferral Payment  
email.pdf  
Adobe Acrobat Document  
38.5 KB

DOT Form IP 422-635ER EF  
Revised 4/2009

December 17, 2019

Max J. Kuney Construction  
P.O. Box 4008  
Spokane, WA 99220

RE: Contract 9385  
Bullfrog Rd Vic – Concrete Rehab, Bridge Deck Rehab & Painting  
Federal-Aid Project No. NHPP-0090(023), 0902(241), 0902(452)  
**Payment Withholding Final**  
Serial No. 026

Dear Mr. Griffith,

This letter serves as notification of WSDOT's intent to withhold payment in progress estimate 10 for the amount of \$167,316.48. This amount was calculated from the attached 509 Excavating (509) letter "Request for response" dated 12/10/19. In that letter, 509 acknowledges that there are disputed amounts between Max J. Kuney Construction and 509. WSDOT has based our withholding on 509's letter and payments reported in DMCS. According to DMCS, no payments have been made to 509 since September 2019, which is consistent with 509's letter. There may be withholding from prior payments that go back further than 509's pay estimates 7 and 8, but it is not clear at this time. It is WSDOT's understanding \$167,316.48 has been billed to Kuney by 509 (estimates 7 and 8) for performing Contract work for which the Contractor has been paid by WSDOT. The Contractor has reported \$0 paid to 509 in DMCS for the months of October and November. It is the responsibility of WSDOT under 1-08.1(1) to withhold the same amount of funds from the Contractor as was withheld since the issue has not been resolved by the next progress estimate.

As stated in WSDOT serial letter 021, "Payment Withholding", and further clarified in WSDOT serial letter 023, "Payment Withholding - Supplement to Serial Letter 021", the attached serial letter MJK SL-017 "Payment Status" dated 11/22/19 does not provide the required withholding justification specified in 1-08.1(1). Specifically, the Contractor has been asked to provide the following to 509 and with a copy to WSDOT:

- The amounts withheld **including any disputed** amounts. Given the ongoing nature of the withholding, WSDOT needs a clear accounting of when the withholding occurred for each invoice or billing received from 509. This was/is required within 10 calendar days of the withholding.
- This should include a reason for the withholding as well as a clear description of what the subcontractor needs to do to have the withholding released.

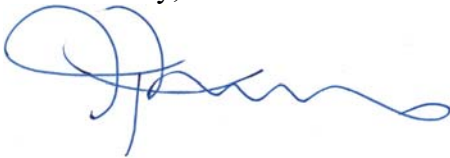
While the Contractor has notified 509 they need to provide lien releases, it is not clear which payment those lien releases represent or what amounts have been withheld (including the disputed amounts). Furthermore, it is not clear which lien releases have not been provided. The Contractor is reminded failure to comply with the requirements of 1-08.1(1) may be “... ***Reflected in the Prime Contractor’s Performance Evaluation.***”, result in “... ***Cancellation, termination or suspension of the Contract, in whole or in part.***”, or result in “... ***Sanctions as provided by the Contract; subcontract; or by law under applicable prompt payment statutes including RCW 39.04.250.***”

Please respond to this letter with the information required above within 7 calendar days or you will be subject to Suspension of Work for failure to comply with the Contract.

Regarding the disputes between Contractor and 509 Excavating, the Contract states that, “***If the parties agree, the Contracting Agency will make a third party neutral available provided the parties to the dispute agree that the cost of doing so is a split between them.***” If the Contractor and 509 are interested, let me know.

If you have any questions, please call me at 509-577-1859.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jerry Wood', with a long, flowing horizontal stroke extending to the right.

Jerry Wood, P.E.  
Project Engineer

JW:jw

cc: File

Attachment1: 509 Letter “Request for Response”

Attachment2: MJK SL-017 “Payment Status”

## Lee, Mark

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**From:** Wood, Jerry  
**Sent:** Tuesday, February 25, 2020 1:41 PM  
**To:** Lee, Mark; Miller, Doug  
**Cc:** Crane, Patricia  
**Subject:** FW: 9385 - Kuney Withholding  
**Attachments:** MJK SL-027 January Payment Status.pdf; 9385 026 - Payment Withholding Final.pdf  
  
**Categories:** 9385

Please release \$167,316.48 - \$95,769.80 = ~~\$71,456.68~~ on the next payment.

\$71,546.68  
ML 3/3/2020

Thanks,  
Jerry

**From:** Wood, Jerry  
**Sent:** Tuesday, February 25, 2020 1:38 PM  
**To:** Smith, Will <SmithW@wsdot.wa.gov>; Keeth, Jon <KeethJ@WSDOT.WA.GOV>; 'Brian White' <WhiteB@wsdot.wa.gov>  
**Cc:** Crane, Patricia <CraneP@wsdot.wa.gov>  
**Subject:** 9385 - Kuney Withholding

We have withheld \$167,316.48 (WSDOT SL 026) based on a stated withholding from 509.

MJK SL-027 indicated \$95,769.80 was withheld with justification we, as a group agreed, meets spec. requirements.

I intend to pay the difference unless anyone disagrees.

I spoke with Kelly a couple minutes ago reminding him of future withholdings requiring notification...we should see a CC of a letter to 509 shortly for the last payment.

Thanks,  
Jerry